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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/700,561

11/16/2000

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AA315X

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/700,561
Filing Date: November 16, 2000
Appellant(s): ASHTON ET AL.

Charles R. Ware
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 10, 2008 appealing from the Office action mailed December 12, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,569,234

BUELL ET AL.

10-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

With respect to claim 1, Buell et al. (hereinafter "Buell") discloses a disposable garment having a front region, a back region, a crotch region between the front region and the back region (figure 2), the disposable garment comprising:

a chassis (14) having a topsheet (24), a backsheet (26) joined with the topsheet, and an absorbent core (28) interposed between the topsheet and the backsheet, the chassis having a central panel (56) having a waist edge and side edges, an ear panel (64, 64') having a waist edge and a leg opening edge, wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width (figure 1A), said chassis further having a waistband panel (60, 60') in the front region and the back region, wherein the ear panel extends laterally outwardly from each side edge of the central panel, and the waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel (figure 1A),

a waist elastomeric material joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband in the front region and the back region (col. 7, lines 39 – 41),

a side elastomeric material joined to the ear panel so as to form extensible ears wherein the side elastomeric material is disposed over substantially all of the ear panel to provide extensibility extending from said leg opening edge to said waist edge, and wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap each other (col. 12, line 65 to col. 13, line 8), and

seams (32) joining the ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature as set forth in figure 1.

As to claim 4, Buell discloses a disposable garment wherein the extensible ear is formed from a "zero strain" stretch laminate as set forth in col. 13, lines 8 - 14.

With reference to claim 5, Buell discloses a disposable garment wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region (60), the other of which is joined to the waistband panel in the back region (60'), wherein the two elements are connected to each other at the seams as set forth in figure 1A.

Regarding claim 7, Buell discloses a disposable garment wherein the backsheet comprises an inner barrier film and a nonwoven outer cover, and wherein the nonwoven

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outer cover is superposed outside the inner barrier film as set forth in col. 10, lines 24 - 43.

As to claim 8, Buell discloses a disposable garment wherein the extensible waistband comprises an extended portion of the outer cover and the waist elastomeric material as set forth in col. 16, lines 1 – 29.

As to claim 9, Buell discloses a disposable garment wherein the extensible ear comprises an extended portion of the outer cover and the waist elastomeric material as set forth in col. 21, lines 49 – 63.

With respect to claim 10, Buell discloses a disposable garment wherein the waist elastomeric material is superposed inside an innermost surface of the garment as set forth in figure 1.

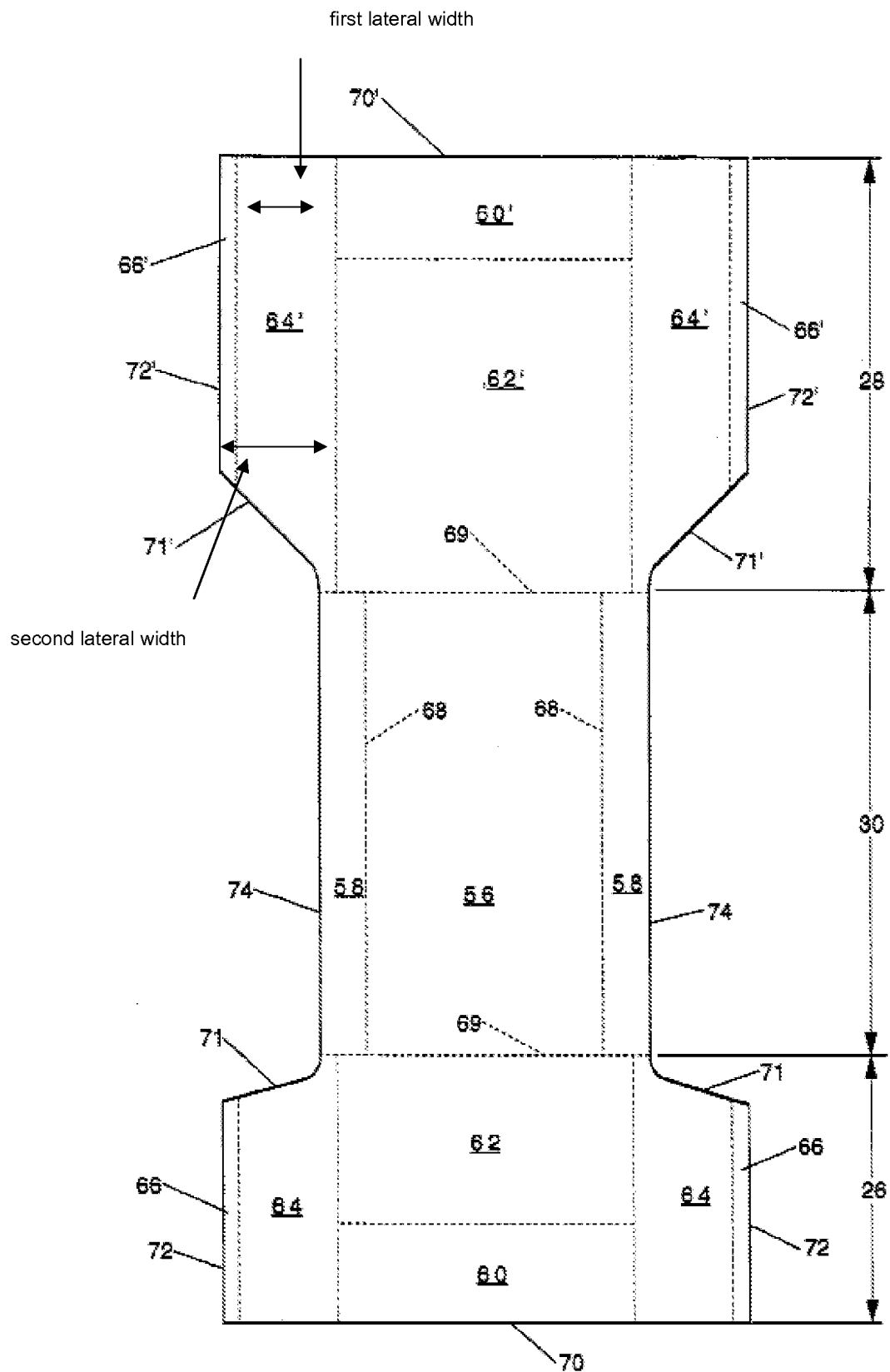
(10) Response to Argument

Appellant argues that the Buell does not appear to describe an ear panel wherein the ear panel waist edge has a first lateral width and an rear panel leg opening having a second lateral width wherein the second lateral width is greater than the first lateral width. Appellant states that pending claims must be given their broadest reasonable interpretation, and examiner agrees. Appellant also states that the term "panel" is used to denote **an area** or **element** (emphasis added) of the pull-up diaper. Therefore, the "panel" may be considered as any portion or element of the pull-up diaper. Neither the drawings nor the specification outline specific areas that should constitute corresponding "panels". The specification generally defines panels as extending

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generally longitudinally and laterally outwardly (page 7, line 16, 21 and 23 - 24, for example). The specification also states that panels may coincide with adjacent panels (page 7, lines 7 - 8). The claimed panels are regions that have been arbitrarily designated as an “ear panel region” and as a “rear panel leg opening”. The examiner contends that the reference of Buell has had regions designated the same way.

Additionally, the claims require **a** first and **a** second lateral width within corresponding regions. The examiner contends that the claimed width may be considered as any width within the designated regions. As such, the examiner interprets figure 1a of Buell as follows:



As noted by annotated figure 1A, the second lateral width is greater than the first lateral width. As previously discussed, there are no stipulations that exclude the examiner's interpretation of the reference, and given the requirement to provide pending claims with the "broadest reasonable interpretation", the preceding interpretation is supported.

As also shown above, the waistband panel (60) extends longitudinally outwardly from opposite ear panel (64).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michele Kidwell/

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/Tatyana Zalukaeva/

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